

**SUMMARY AND RESPONSE TO PUBLIC COMMENTS RECEIVED RE AMENDMENTS TO CCR 2646.6 ET SEQ
(COMMENTS RECEIVED FROM FEBRUARY 27, 2009 (PRE-NOTICE PUBLIC WORKSHOP), DECEMBER 3, 2009 (PUBLIC HEARING) AND FEBRUARY 12,
2010 15 DAY COMMENT PERIOD.**

AMENDED SECTION	COMMENTER	COMMENTS	DOI RESPONSE
<p>Amend CCR 2646.6 subsection (a) to change the annual reporting requirement to a biennial reporting requirement.</p> <p>Amend CCR 2646.6 subsection (a) to change the deadline for filing the Community Service Statement (CSS) from March 1 to April 1 (biennially).</p> <p>General comments regarding the necessity, authority for and clarity of the regulation.</p>	<p>National Association of Mutual Insurance Companies (NAMIC), Pacific Association of Domestic Insurance Companies (PADIC) & Personal Insurance Federation of California (PIFC)</p> <p>(NAMIC and PADIC provided written comments on February 27, 2009 and NAMIC, PADIC and PIFC provided essentially identical comments on December 3, 2009. Both sets of comments are represented here.)</p>	<p>NAMIC, PADIC and PIFC (collectively, "Commenters") contend that the proposed amendments to 10 CCR 2646.6 fail the "necessity", "authority", and "clarity" requirements necessary for the proposed amendments to be approved by the Office of Administrative Law (OAL).</p> <p><u>Necessity</u></p> <p>Specifically, Commenters assert that they "do not believe that the CDI has demonstrated that the proposed amendments are 'necessary' to effectuate the purposes of or compliance with the Commissioner's Report on Underserved Communities.</p> <p>"The CDI has not presented any data, documentation or evidence to support a reasonable conclusion that insurance carriers have not been complying with the disclosure requirements of the regulation relating to Commissioner's Report on Underserved Communities."</p> <p>Commenters assert further that "the proposed regulatory 'penalties/fines amendment' is unwarranted in light of the fact that insurance carriers engage in 'good faith' compliance with the current regulation, our members are also concerned with the excessiveness of the dollar amount (not to exceed \$100,000) of the proposed penalties/fines, and the broad and unfettered discretion granted to the department to decide the amount of the civil penalty/fine.</p> <p>"The Department has provided no statement of need or credible evidence that</p>	<p>This comment has been considered and is rejected.</p> <p>The Department has stated the specific purpose of each proposed amendment to the regulation and has provided an explanation as to why the proposed amendment is reasonably necessary to accomplish that purpose.</p> <p>Commenters refer specifically to the proposed amendment to CCR § 2646.6(e) requiring "fines and penalties to be assessed against insurance companies that fail to comply with the regulation or that continually provide late and/or erroneous data to the Department."</p> <p>The Department's Initial Statement of Reasons states as the Rationale for Necessity: that "since the initial implementation of these regulations, the Commissioner has determined that competing regulatory requirements and California's lack of fines and penalties associated with noncompliance have resulted in the repeated failure of approximately 38% of carriers to comply with this regulation. This continuing noncompliance, in turn, has negatively impacted the Commissioner's ability to timely issue the CRUC on an annual basis."</p> <p>As stated, approximately 38 out of every 100 carriers that are subject to the regulation fail to timely and or accurately report data pursuant to the regulation. The Department has stated that this noncompliance has negatively impacted the Commissioner's ability to timely issue</p>

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		<p><u>Authority</u></p> <p>NAMIC and PADIC question the Department's authority to add a civil penalty/fine provision to the current regulation.</p>	<p>It is the Department's view that the Commissioner's authority to enforce these regulations includes the ability to levy a penalty for noncompliance. The Department agrees with the California Supreme Court, which has opined that "[t]he Commissioner's powers are not limited to those expressly conferred by statute; rather, he or she may exercise such additional powers as are necessary for the efficient administration of powers expressly granted by statute or as may fairly be implied from the statute granting the powers." (<i>20th Century Ins. Co. v. Garamendi</i>, 8 Cal. 4th at p. 245.)</p>
		<p><u>Clarity</u></p> <p>NAMIC and PADIC state that the "current language of the proposed amendments is rife with vagueness and ambiguity. Specifically, the proposed amendments to 2646.6(e) state that '[a] person subject to the requirements of Title 10 CCR 2646.6 who submits any false information in connection with a request for information or data pursuant to that section shall be liable for a civil penalty' [emphasis added]. "</p> <p>"NAMIC and PADIC are concerned that this strict liability (shall be liable) penalty provision of the proposed amendments could expose insurers, who have made unintentional, aberrational, and/or minor</p>	<p>The Department has considered and rejects Commenters' assertions regarding vagueness of subsection (e). The language of the regulation is clear and makes no change to the existing degree of knowledge that insurers are charged with in order to avoid violations of the Insurance Code. The proposed amendment makes no change to the existing legal definition of "willfulness". Insurers are currently on notice as to what type of conduct existing law considers "willful". Once the determination has been made by an Administrative Law Judge (ALJ) at the conclusion of an appropriate proceeding, that a carrier's noncompliance was "willful", the regulation informs the ALJ as to amount of the penalty, based on the</p>

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		<p>administrative or clerical errors in their disclosure of information, to substantial regulatory penalties/fines.</p> <p>NAMIC, PADIC and PIFC comment that “[t]he fact that there is no stated effective date could be interpreted to mean that any filing that is currently due or in the hands of the CDI could be subject to the newly proposed penalties.”</p>	<p>ALJ’s determination.</p> <p>At the public hearing, the Department’s representative discussed the issue of “unintentional, aberrational, and/or minor administrative or clerical error[s]” in the context of these regulations as well as in the context of the day-to-day operations of the Statistical Analysis Division, which is responsible for compiling and analyzing the data pursuant to the regulations. Ms. Buenconsejo stated that “[s]o we have basically 90 days [total grace period until the data is due, comprised of] two resubmissions, 30 days [each and a 30 day extension for a], maximum of 90 days before the” process begins to assess penalties. (Transcript at pp. 23 – 27.)</p> <p>Commenters’ assertion regarding assumed retroactivity of a regulatory penalty has no basis in fact or law as there is a presumption against the retroactive application of new law. (<i>See, Aetna Casualty & Surety Co. v. Industrial Acci. Com.</i>, 30 Cal. 2d 388.) Furthermore, the regulation in no way implies or expressly states that penalties would be applied retroactively.</p>
	Association of California Insurance Companies (ACIC) and Michelman & Robinson, LLP (Michelman & Robinson have been retained by ACIC to provide an opinion on the authority and reference citations	<p>ACIC supports the adoption of these amendments to Section 2646.6(a). The amendments will simplify insurers’ compliance with the regulation’s reporting mandates and will assist the department’s management of the data that it receives from insurers.</p> <p>ACIC recommends that the deadline for</p>	<p>The Department has proposed to change the deadline for compliance with the regulation from March 1 (annually) to May 1 (biennially).</p> <p>Carriers are currently required to annually</p>

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	<p>contained in the proposed amendments to the regulation. We refer to them, as appropriate, collectively as "ACIC".)</p> <p>(ACIC provided written comments on March 3, 2009 and on December 3, 2009. Both sets of comments are referred and responded to collectively here.)</p>	<p>submission of an insurer's Community Service Statement should be changed from March 1 to May 1. The current March 1 deadline creates significant compliance challenges for insurers. In many cases, the financial information called for in the Statement is not available until mid-February. In addition, March 1 is the same date for filing an insurer's annual statement. The obligation to submit both the Community Service Statement and the annual statement on March 1 strains company resources.</p> <p>Commenters suggest either eliminating or restricting the obligation of commercial insurers to report pursuant to the regulation as well as eliminating subsection (b)(6) as well as the elimination of data regarding the number of offices, by ZIP code and the criteria by which the Commissioner determines that a Community is underserved.</p>	<p>collect and annually report certain data to the Department pursuant to the regulation. The proposed amendments have the effect of <i>lessening</i> the burden on carriers in that carriers would, pursuant to the amendment, report biennially, instead of annually.</p> <p>This comment is rejected on the ground that this subsection of the regulation is not the subject of the proposed regulatory action.</p>
	<p>American Insurance Association (AIA) provided written comments on March 3, 2009 and on December 3, 2009. We refer and respond to both sets of comments contemporaneously.</p>	<p>AIA had no comment on this proposed amendment.</p>	
	<p>Consumer Watchdog (CW)</p>	<p>The proposed change in subdivision (a)(1) from annual to biennial reporting is unacceptable. The solution to lack of</p>	<p>This comment has been considered and rejected. The Department has testified on the record at the proceeding that due to</p>

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		<p>compliance is not weakening the standards, and an insurer unwilling to comply with annual reporting requirements is no more likely to comply with biennial reporting requirements. Consumer Watchdog opposes the proposed amendment to subdivision (c), changing the timing of the Commissioner's report from annually to biennially.</p> <p>Consumer Watchdog does not believe that it is necessary to change the insurers' reporting requirement in order to change the Commissioner's report requirement in subdivision (c). Thus the Commissioner can issue his report biennially while still maintaining the annual reporting requirement for insurers.</p>	<p>competing mandatory reporting requirements and staffing requirements, biennial reporting in conjunction with a penalty for noncompliance will allow the Department to meet its obligations to compile, analyze and report the data that is collected pursuant to CCR §2646.6. (Transcript of Proceeding at pp. 23 – 28.)</p>
	Automobile Club of Southern California (ACSC)	ACSC's comment at the public hearing was to clarify when data gathered in 2009 and 2010 would be released pursuant to the proposed amendment.	
Amend CCR 2646.6 subsection (a)(5) to include agencies as well as agents and to clarify that companies are to report those agents, or agencies having agents, that are conversant in specified languages other than English	NAMIC, PADIC & PIFC	NAMIC, PADIC & PIFC had no comment on this proposed amendment.	
	ACIC	ACIC PIFC had no comment on this proposed amendment.	
	AIA	AIA had no comment on this proposed amendment.	

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	CW	CW had no comment on this proposed amendment	
Amend CCR 2646.6 subsection (c) to specify that the Commissioner will release the CRUC after the collected data has been analyzed and that two years' of data will be released simultaneously.	NAMIC, PADIC & PIFC	NAMIC, PADIC & PIFC had no specific comment on this proposed amendment.	
	ACIC	ACIC suggested clarifying subsection (c) of the regulation so that it conforms to the proposed change. Subsection (c) requires the Commissioner to issue a Report on Underserved Communities every year as soon as the information from insurers is available. It would seem that if insurers submit information every other year, the Commissioner's Report on Underserved Communities also should be issued every other year. ACIC supports the amendments to Section 2646.6 (c) because the amendments to the description of the Commissioner's Report on Underserved Communities to reflect the fact that insurers' Community Service Statements will include two years of data.	This comment has been considered and rejected. The proposed amendment to the regulation clarifies that as the Department will be gathering two years' worth of data, biennially, two years' worth of data will be released in the Commissioner's Report on Underserved Communities. This was reiterated by the Department's Statistical Analysis Division personnel at the public hearing. (<i>See</i> , Transcript, pp. 19 – 21.)
	AIA	AIA had no comment on this proposed amendment.	
	CW	CW had no comment on this proposed amendment.	

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(e) After properly noticed hearing is conducted in accordance with the Insurance Code Sections 1861.08, <u>et seq.</u> , with the Commissioner having all powers granted therein, any insurer failing to comply with the provisions of these sections will be subject to a fine of five thousand dollars (\$5,000) per day until the insurer has met compliance, and/or the suspension of the insurer's Certificate of Authority for not more than one year.	NAMIC, PADIC & PIFC	<p>NAMIC, PADIC and PIFC contend that the proposed amendments to 10 CCR 2646.6 fail the "necessity", "authority", and "clarity" requirements necessary for the proposed amendments to be approved by the Office of Administrative Law (OAL). The CDI has not presented any data, documentation or evidence to support a reasonable conclusion that...the proposed administrative penalties/fines are necessary to enforce insurance company compliance with 10 CCR 2646.6.</p> <p>In addition to NAMIC's, PADIC's and PIFC's concern that the proposed regulatory "penalties/fines amendment" is unwarranted in light of the fact that insurance carriers engage in "good faith" compliance with the current regulation, our members are also concerned with the excessiveness of the dollar amount (aggregate penalty not to exceed \$100,000) of the proposed penalties/fines, and the broad and unfettered discretion granted to the department to decide the amount of the civil penalty/fine.</p> <p>NAMIC, PADIC, and PIFC question the Department's authority to add a civil penalty/fine provision to the current regulation and submit that such authority resides in the legislative process.</p> <p>Additionally, the CDI already has the regulatory authority to impose sanctions against an insurer, who fails to timely comply with disclosure and reporting</p>	<p>This comment has been considered and is rejected.</p> <p>The Department has stated the specific purpose of each proposed amendment to the regulation and has provided an explanation as to why the proposed amendment is reasonably necessary to accomplish that purpose.</p> <p>Commenters refer specifically to the proposed amendment to CCR § 2646.6(e) requiring "fines and penalties to be assessed against insurance companies that fail to comply with the regulation or that continually provide late and/or erroneous data to the Department."</p> <p>The Department's Initial Statement of Reasons states as the Rationale for Necessity: that "since the initial implementation of these regulations, the Commissioner has determined that competing regulatory requirements and California's lack of fines and penalties associated with noncompliance have resulted in the repeated failure of approximately 38% of carriers to comply with this regulation. This continuing noncompliance, in turn, has negatively impacted the Commissioner's ability to timely issue the CRUC on an annual basis."</p> <p>Approximately 38 out of every 100 carriers that are subject to the regulation fail to timely and or accurately report data pursuant to the regulation. The</p>

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		<p>requests from the Department; therefore, these additional penalties are not warranted</p> <p>NAMIC, PADIC, and PIFC are concerned that this <i>strict liability</i> (shall be liable) penalty provision of the proposed amendments automatically exposes insurers, who have made unintentional, aberrational, and/or minor administrative or clerical errors in their disclosure of information, to substantial regulatory penalties/fines.</p>	<p>Department has stated that this noncompliance has negatively impacted the Commissioner's ability to timely issue the required annual reporting. The Department is not required by law to consider or prepare any other information, statement, report or data in connection with these proposed amendments.</p> <p>The transcript of the public hearing contains testimony from the Department's Chief Statistician stating that compliance with data calls that are subject to penalties are much better than the compliance level with the data call that required pursuant to the regulation. (Transcript of Proceeding, at p. 20, ll. 15-20.)</p> <p>As to the necessity of the proposed regulatory penalties, etc., the purpose of administrative fines is to secure compliance with the regulations, which have been promulgated for the important public policy objective of the prevention of unfair discrimination in insurance rates and rating pursuant to the requirements of CIC §§ 1861.03(a) and 1861.05(a). (<i>See, Kinney v. Vaccari</i> (1980) 27 Cal. 3d 348, 352; <i>Farmers Ins. Exchange v. Superior Court</i> (1992) 2 Cal. 4th 377 and <i>State Farm Mutual Automobile Insurance Company, et al., v. Garamendi</i>, 32 Cal. 4th, 1029 (2004).) The amount of the proposed penalty is within the existing statutory framework set forth in CIC 1861.14.</p>

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	ACIC& Michelman & Robinson (Memo refers to penalties provision only.)	<p>ACIC is opposed to the adoption of proposed Section 2646.6 (e) because the proposed section is beyond the scope of authority granted to the Department of Insurance and because the section is inconsistent with the Government Code provision that prohibits a state agency from imposing a penalty without express statutory authority.</p> <p>ACIC questions whether the Community Service Statement qualifies as a data call required pursuant to Section 11628(a).</p> <p>However, if Insurance Code Section 11628 (a) provides authority for the penalties in the proposed subsection (e) that authority is restricted to automobile insurance because the scope of Insurance Code Section 11628 is limited to automobile insurance. Section 11628 provides no authority for imposing penalties for the late filing of information relating to the other lines of insurance subject to regulatory Section 2646.6.</p> <p>In addition to being unauthorized, the proposed penalties for late filings are unreasonable. Proposed subsection (e) would impose a maximum fine of \$5,000 for every 30 days during which there is a non-willful failure to meet the deadline for policy information called for in a Community Service Statement. In contrast, Insurance Code Section 924 sets the penalty for the filing of an annual statement at \$336.</p> <p>Submission of False Information The first</p>	<p>It is the Department's view that the Commissioner's authority to enforce these regulations includes the ability to levy a penalty for noncompliance. The Department agrees with the California Supreme Court, which has opined that "[t]he Commissioner's powers are not limited to those expressly conferred by statute; rather, he or she may exercise such additional powers as are necessary for the efficient administration of powers expressly granted by statute or as may fairly be implied from the statute granting the powers." (<i>20th Century Ins. Co. v. Garamendi</i>, 8 Cal. 4th at p. 245.)</p> <p>The comment that Commissioner's authority to issue penalties pursuant to CIC 11628(a) is limited to automobile insurance has been considered and the regulation has been changed to reflect that penalties for noncompliance will be assessed against carriers failing to comply with the regulation's requirements regarding automobile insurance.</p> <p>The Department has considered and rejects Commenters' assertions regarding the</p>

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	<p>sentence in the proposed subsection (e) subjects a person who submits "false information" to a maximum fine of \$100,000. The sentence makes no distinction between willful and non-willful acts and makes no distinction between substantive and non-substantive information. Literally read, proposed subsection (e) would impose a maximum \$100,000 fine on an insurer who inadvertently includes incorrect information about a minor detail in the insurer's Community Service Statement. This result is absurd and out of line with statutory penalty provisions.</p> <p>The department cites no specific authority for proposed subsection (e)'s imposition of penalties for the filing of false information.</p> <p>None of the authority and reference citations can reasonably be read to authorize the penalty provision of the proposed CSS regulation. The penalty provision is therefore inconsistent with section 11145 of the government code and violates the consistency standard of the APA.</p>	<p>issue of willful vs. non-willful acts in subsection (e). The language of the regulation is clear and makes no change to the existing degree of knowledge that insurers are changed with in order to avoid violations of the Insurance Code The proposed amendment makes no change to the existing legal definition of "willfulness". Insurers are currently on notice as to what type of conduct existing law considers "willful". Once the determination has been made by an Administrative Law Judge (ALJ) at the conclusion of an appropriate proceeding, that a carrier's noncompliance was "willful", the regulation informs the ALJ as to amount of the penalty, based on the regulation.</p> <p>At the public hearing, the Department's representative discussed the issue of "unintentional, aberrational, and/or minor administrative or clerical error[s]" in the context of these regulations as well as in the context of the day-to-day operations of the Statistical Analysis Division, which is responsible for compiling and analyzing the data pursuant to the regulations. Ms. Buenconsejo stated that "[s]o we have basically 90 days [total grace period until the data is due, comprised of] two resubmissions, 30 days [each and a 30 day extension for a], maximum of 90 days before the" process begins to assess penalties. (Transcript at pp. 23 - 27.)</p>

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	AIA	<p>Under the proposed regulation changes, an insurer failing to comply with an information or data request under Tit. 10 C.C.R. Sec. 2646.6 would be fined up to \$5,000 for each 30 day period it fails to comply - with no limit. Willful failures to comply would result in civil fines up to \$10,000 for each 30 day period, up to a total not to exceed \$100,000.</p> <p>These proposed changes are not authorized by law and are excessive. Furthermore, the Department has not demonstrated why there is a need for such disproportionate fines Under Government Code Section 11349.1; a state agency must demonstrate the necessity for a proposed regulation. Under the Government Code Section 11349 definition, a state agency must demonstrate by substantial evidence the need for a regulation. Nothing has been presented as to why new fines are needed. No information supporting setting the penalties at such an excessive level, much less any level at all, has been provided. We note that the Insurance Commissioner currently has the ability to enforce the provisions of the Insurance Code, which also makes these proposed amendments unnecessary redundant.</p> <p>We are also concerned that as written the regulations would impose severe penalties for inadvertent or minor errors. It appears that fines could be levied for simple mistakes.</p>	<p>It is the Department's view that the Commissioner's authority to enforce these regulations includes the ability to levy a penalty for noncompliance. The Department agrees with the California Supreme Court, which has opined that "[t]he Commissioner's powers are not limited to those expressly conferred by statute; rather, he or she may exercise such additional powers as are necessary for the efficient administration of powers expressly granted by statute or as may fairly be implied from the statute granting the powers." (20th Century Ins. Co. v. Garamendi, 8 Cal. 4th at p. 245.)</p> <p>The Department's Initial Statement of Reasons states as the Rationale for Necessity: that "since the initial implementation of these regulations, the Commissioner has determined that competing regulatory requirements and California's lack of fines and penalties associated with noncompliance have resulted in the repeated failure of approximately 38% of carriers to comply with this regulation. This continuing noncompliance, in turn, has negatively impacted the Commissioner's ability to timely issue the CRUC on an annual basis."</p> <p>Approximately 38 out of every 100 carriers that are subject to the regulation fail to timely and or accurately report data</p>

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		<p>Regulations imposing large penalties for inconsequential errors are unreasonable and burdensome.</p> <p>The Department should withdraw the unauthorized penalty provisions.</p>	<p>pursuant to the regulation. The Department has stated that this noncompliance has negatively impacted the Commissioner's ability to timely issue the required annual reporting. The Department is not required by law to consider or prepare any other information, statement, report or data in connection with these proposed amendments.</p> <p>The transcript of the public hearing contains testimony from the Department's Chief Statistician stating that compliance with data calls that are subject to penalties are much better than the compliance level with the data call that required pursuant to the regulation. (Transcript of Proceeding, at p. 20, ll. 15-20.)</p> <p>As to the necessity of the proposed regulatory penalties, etc., the purpose of administrative fines is to secure compliance with the regulations, which have been promulgated for the important public policy objective of the prevention of unfair discrimination in insurance rates and rating pursuant to the requirements of CIC §§ 1861.03(a) and 1861.05(a). (<i>See, Kinney v. Vaccari</i> (1980) 27 Cal. 3d 348, 352; <i>Farmers Ins. Exchange v. Superior Court</i> (1992) 2 Cal. 4th 377 and <i>State Farm Mutual Automobile Insurance Company, et al., v. Garamendi</i>, 32 Cal. 4th, 1029 (2004).) The amount of the proposed penalty is within the existing statutory framework set forth in CIC 1861.14.</p>

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	CW	<p>Consumer Watchdog supports, in theory, the proposed amendment to subdivision (e), which will add penalties for failure to comply with the regulation. The information obtained pursuant to section 2646.6 is an important tool for identifying those insurers that fail to provide adequate service in underserved communities, and insurers' refusal to provide this information is unacceptable. Adding the threat of fines ensures that companies will prioritize filing this information with the Department in a timely manner. However, to make this more effective, Consumer Watchdog believes the proposed penalties are too low. A penalty of \$5,000 for each 30-day period an insurer is late is not significant for a multi-billion dollar company, and for companies with horrible service in underserved communities, paying \$50,000 per year to hide that information might be an attractive option, which could lead to companies opting to pay the fine rather than providing this vital information. Thus, the per-month penalty should be increased and the cap on the penalty should be eliminated.</p>	

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THE FOLLOWING COMMENTS WERE OUTSIDE OF THE SCOPE OF THE PROPOSED AMENDMENTS TO THE REGULATION

NAMIC, PADIC & PIFC	Add a requirement that each insurer submit data on their insurance investments by ZIP code annually that meet the criteria of community development as defined under the CRA regulations.	The Department did not consider, and does not respond to comments that are outside of the scope of the proposed amendments to the regulation.
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	ACIC	<p>ACIC recommends that commercial insurance be excluded from the regulation. We know of no availability problems in California's commercial lines market.</p> <p>The requirement in Section 2646.6(b)(6) to ask an applicant for information about the applicant's race, national origin and gender should not be applied to homeowners, commercial multiple peril or fire (the lines of insurance listed in Section 2646.6(b)(1)(B)(C) and (D)). This change would lessen the regulation's economic impact on insurers.</p> <p>ACIC believes that the requirement that an insurer must ask an applicant for information about the applicant's race, national origin and gender is inconsistent with the Insurance Code, at least as the requirement is applied to lines of insurance other than automobile insurance.</p> <p>ACIC recommends that commercial insurance should be excluded from the regulation.</p> <p>The existing regulation's reliance on information about claims and sales offices located in particular ZIP codes produces an inaccurate and unreliable description of an insurer's.</p> <p>ACIC recommends that the department review those standards that are used to determine whether a community is underserved by the insurance industry.</p>	<p>The Department did not consider, and does not respond to comments that are outside of the scope of the proposed amendments to the regulation.</p>

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AMENDED SECTION	COMMENTER	COMMENTS	DOI RESPONSE
	AIA	The regulations should also provide a requirement that, when an insurer requests an exemption from complying with Sec. 2646.6, such request must be granted or denied by the Department within 30 business days of the request, or be deemed approved, and there could be no enforcement action while an exemption request is pending. There have been instances of companies awaiting a grant of an exemption being penalized for non-compliance.	The Department did not consider, and does not respond to comments that are outside of the scope of the proposed amendments to the regulation. However, we note that the regulations to provide for any “exemptions” to compliance. Furthermore, there are currently no penalties for non-compliance with this regulation.